IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.358 OF 2005

Shri Girdharilal Sagarmal Bihani & Anr. ...Applicants

V/s

State of Maharashtra & Anr. ...Respondents

Mr.A.H.H.Ponda for applicants

Mr.N.J. Jhaveri for respondent No.2

Mr. A.S. Shitole,APP for the State

Coram : V.M.Kanade,J.

Dated : 07/04/2005

P.C. :-

1 I have heard the learned counsels for petitioner, respondent No.2 and APP for the State.

2 The applicant has filed this application for quashing process arising out of C.R.NO.7 of 2002,GB, CB,CID,EOW, Mumbai(transferred from M.R.A. Marg Police Station) vide M.E.C.R. No. 11 of 2001. It is submitted by the learned counsel for the applicant that the applicant and respondent No.2 have now settled the matter out of Court and respondent No.2 has no objection if the complaint is quashed. He has filed an affidavit dated 05/02/2005 in

which he has stated his no objection if the FIR and proceeding arising out of M.E.C.R.No.11 of 2001 of M.R.A. Marg Police station is quashed and set aside.

4 It is submitted by the learned counsel appearing on behalf of the applicant that since the offence registered against him is non-compoundable though he had preferred an application in the court of Metropolitan Magistrate, the same was rejected by the trial court.

5 The Apex Court in the case of **B.S. Joshi & Ors. vs.State of Haryana & Anr.** Reported in **2003 CRI L.J. 2028** has observed that section 320 of Code of Criminal Procedure does not curtail the powers which can be exercised by this court under section 482 of Code of Criminal Procedure. The Apex Court in paragraph-15 of the said decision has observed as under.

"In view of above discussion we hold that the High Court in exercise of its inherent powers can quash criminal proceedings or FIR or complaint and Section 320 of the Code does not limit or affect the powers under Section 482 of the Code".

6 Since the complaint which was filed by the respondent was directed only against the applicant herein, I do not see any reason as to why the said complaint should

not be quashed. The learned counsel for the respondent No.2 after taken instructions from Mr. P.I. Vakule has stated that he has no objection if the said complaint is quashed. In the result, criminal application is allowed in terms of prayer clause (a).Accordingly, criminal application is disposed of.

(V.M.Kanade, J.)